

LAW OFFICES
TRISTER, ROSS, SCHADLER & GOLD, PLLC

1666 CONNECTICUT AVENUE, N.W., FIFTH FLOOR
WASHINGTON, D.C. 20009

PHONE: (202) 328-1666
FAX: (202) 204-5946
www.tristerross.com

MICHAEL B. TRISTER
GAIL E. ROSS
B. HOLLY SCHADLER
LAURENCE E. GOLD
ALLEN H. MATTISON*
*ALSO ADMITTED IN MARYLAND

KAREN A. POST
Senior Counsel

NEIL C. WEARE
MEREDITH K. MCCOY*
*ALSO ADMITTED IN VIRGINIA

Montana Office
LAURA L. HOEHN*
Of Counsel
*ALSO ADMITTED IN CALIFORNIA

June 23, 2014

By E-mail and regular mail

Confidential per 2 U.S.C. § 437g(a)(12)

Mr. Jeff S. Jordan
Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Matter Under Review 6812

Dear Mr. Jordan:

This response to the complaint in MUR 6812 is submitted on behalf of respondents Laborers' International Union of North America ("LIUNA"), Laborers' International Union of North America PAC ("LIUNA PAC"), and Armand E. Sabitoni, in his official capacity as Treasurer of LIUNA PAC.

In light of LIUNA and LIUNA PAC's roles in the underlying matter, which, as outlined below, were tangential at most, we request that the Federal Election Commission ("Commission" or "FEC") find that there is no reason to believe that the Complaint sets forth a violation of 2 U.S.C. § 441b. In the alternative, we request that the Commission refer this matter to its Alternative Dispute Resolution ("ADR") office prior to making any reason-to-believe determination; or, further alternatively, that the Commission enter into pre-probable cause conciliation consistent with 11 CFR § 111.18(d) prior to any such determination.

The Parties

LIUNA is an international labor organization of more than 500,000 members, the substantial majority of whom are employed in the construction industry. LIUNA PAC is its federally registered separate segregated fund.¹ Local 453 is one of LIUNA's affiliates in West Virginia. Penn Line is a corporation based in Scottsdale, PA that does business in West Virginia.

The complainant is Jeffrey L. Richmond, a former employee of Penn Line, who is represented

¹ The complaint and record make references to Laborers' Political League ("LPL"), which is simply the former name of LIUNA PAC.

RECEIVED
FEDERAL ELECTION
COMMISSION
2014 JUL -2 PM 12:14
OFFICE OF GENERAL
COUNSEL

100444020000

Mr. Jeff S. Jordan
Federal Election Commission
June 23, 2014
Page 2

by the National Right to Work Legal Defense and Education Foundation, Inc., a virulently anti-union organization that routinely files complaints with government agencies against labor organizations.

Statement of Facts

LIUNA and LIUNA PAC take seriously their responsibility to comply with the requirements of 2 U.S.C. § 441b and all other provisions of the Federal Election Campaign Act ("the Act") as well as the Commission's regulations.

Towards this end, LIUNA has developed a model authorization form that it provides to its local affiliates to help ensure compliance with relevant laws. (Exhibit A.) LIUNA's model form has been adapted for use by Local 453 and other affiliates, in Local 453's case also to arrange for contributions to its West Virginia-registered state PAC. This authorization form is required to be signed prior to employers making payroll deductions from LIUNA member-employees for voluntary PAC contributions. The Local 453 authorization form is compliant with the provisions of 2 U.S.C. § 441b and 11 C.F.R. § 114.5 that are implicated in Richmond's complaint.²

The Local 453 PAC payroll deduction form provides a "voluntary check-off authorization" for PAC contributions. This second section expressly states that "this authorization is voluntarily made," that PAC contributions "are not conditions of membership in the union or of employment with any employer," that the signatory has "a right to refuse to sign" the authorization for PAC contributions "without reprisal," and "that the union cannot favor or disadvantage" any member because of the amount of a contribution or a decision not to contribute. It also provides express notification that such deductions will be used "to make political expenditures and contributions in connection with federal, state and local elections." Richmond concedes that this section of the form stated that "contributions were voluntary." (Complaint, ¶ 9.)

With respect to the allegations made by Richmond in the present complaint, we understand that he has already filed and concluded three actions elsewhere based on similar allegations concerning events during the summer and early fall of 2012. The first, filed by Richmond against Penn Line in West Virginia Circuit Court, settled in February 2013. (See Penn Line response, Exhibit B.) The second, filed by Richmond against Penn Line before the National Labor Relations Board ("NLRB"), was consolidated with a third, filed by Richmond against Local 453, with the parties reaching settlements in May 2013. (See Penn Line response, Exhibit F; Local 453 response, first exhibit.) The present, fourth action, while complaining anew about the same events as the others, is the first to allege violations of any kind by LIUNA or LIUNA PAC, yet the new complaint alleges no facts whatsoever about their actual conduct.

² The Local 453 authorization form does not include the "best efforts" language included in LIUNA's authorization form, as required by 11 C.F.R. § 104.7(b)(1), but this provision is not at issue here and does not concern the voluntariness of making contributions to LIUNA PAC through payroll deduction or otherwise.

Mr. Jeff S. Jordan
Federal Election Commission
June 23, 2014
Page 3

None of these prior settlements included any admission of liability by Penn Line or Local 453. Nonetheless, as a result of these prior settlements, Richmond was twice refunded -- by both Penn Line and Local 453 -- the \$11.51 of payroll deductions made for contributions to LIUNA PAC (formerly LPL). (Penn Line response, Exhibits B, F.) In an abundance of caution, LIUNA PAC is reimbursing both Penn Line and Local 453 \$11.51 each for the refunds they made to Richmond for these contributions.

LIUNA and LIUNA PAC are satisfied that the relevant LIUNA PAC contribution practices in West Virginia involving the other respondents are compliant, whether or not they were flawed with respect to Richmond. LIUNA counsel consulted with Local 453 counsel during Local 453's settlement process before the NLRB to help ensure compliance with the Act and the Commission's regulations. As a result of the NLRB settlement, Local 453 posted a "Notice to Employees" in "prominent places around its facility" and mailed copies to employees. (Local 453 response, first and second exhibits.) Among other things, it provided notice that Local 453 "WILL NOT accept monies that Penn Line Service, Inc., deducted from Unit employees' wages notwithstanding the absence of employee authorizations for the deductions and remittance;" and that it "WILL NOT accept assistance or support from the Employer Penn Line Service, Inc. in presenting and telling Unit employees to sign our PAC Check-off Authorization or that such authorization had to be signed in order to work." (Local 453 response, second exhibit.)

As a result of Penn Line's NLRB settlement, it also posted a "Notice to Employees" in "prominent places around its facility" and mailed copies to employees. (Penn Line response, Exhibit G.) Among other things, it provided notice that Penn Line "WILL NOT tell you that you will not work or be sent home if you do not sign the Union's Voluntary Check-off authorization for its Political League and Political Action Committee;" that it "WILL NOT assist and support the Union by deducting Union dues and fees from your wages and remitting it to the Union in the absence of your authorizations for the deduction and remittance;" and that it "WILL NOT assist and support the Union by presenting to you and telling you to sign the Union's Voluntary Check-off Authorization for its Political League and Political Action." (Penn Line response, Exhibit G.)

In short, Richmond has been refunded twice any funds that may have been deducted as PAC contributions and both Local 453 and Penn Line have instituted measures to ensure that any type of violation of the nature alleged by Richmond will not occur in the future. The posted notices, plus the notice on the authorization form itself, have satisfied LIUNA and LIUNA PAC that their payroll deduction authorization policies are enforced.

Response to Specific Charges

The allegations made in the complaint center on actions allegedly taken by Penn Line and its

Mr. Jeff S. Jordan
Federal Election Commission
June 23, 2014
Page 4

employees. Nowhere in the complaint does Richmond even allege that LIUNA or LIUNA PAC were aware of or should have been aware of Penn Line's alleged conduct. At most, Richmond alleges that unauthorized payroll deductions made by Penn Line on Richmond's behalf were received by LIUNA and/or LIUNA PAC, with some of these funds allegedly being used to make political contributions.

First, there is no support for Richmond's allegations that LIUNA or LIUNA PAC violated 2 U.S.C. § 441b(b)(3) by making PAC payroll deductions a condition of membership in the union or a condition of employment, by failing to inform Richmond of the political purposes of the payroll deductions, or by failing to inform Richmond of his right to refuse without reprisal. (Complaint, ¶ 12, 15, 17.) Also unsupported is Richmond's allegation that LIUNA or LIUNA PAC solicited PAC funds from union nonmembers. (Complaint, ¶ 12.)

To the contrary, Richmond's sole apparent contact with LIUNA and LIUNA PAC was through the authorization form he reviewed. (Complaint, ¶ 9; Affidavit, ¶ 8.) *The complaint concedes that the authorization form "itself stated" that PAC contributions "were voluntary."* (Complaint, ¶ 9.) Richmond alleges that he signed the authorization to join Local 453, as well as the authorization for payroll deductions for union dues. Richmond alleges that he chose not to sign the voluntary authorization for PAC contributions, evidently after reading it and understanding its contents. Richmond does not allege any deficiencies in the authorization form itself, nor does he allege that LIUNA or LIUNA PAC had any role, knowledge, or reason to know that the authorization form was being improperly used, if it was. The focus of the complaint is Penn Line's alleged action, with no mention of any action or inaction taken by LIUNA or LIUNA PAC.

Addressing Penn Line's actions, the complaint alleges a principal-agent relationship between Penn Line and Orvil Walls, who allegedly informed Richmond that, contrary to the express statements of the authorization form itself, payroll deductions for PAC contributions were a condition of employment. (Complaint, ¶ 10.) Nowhere does the complaint allege that Penn Line was acting as an agent for LIUNA or LIUNA PAC. Richmond does not allege that Penn Line's alleged conduct was authorized, either expressly or impliedly, by LIUNA or LIUNA PAC, or that they were even aware of its actions. To the contrary, Penn Line's alleged actions, if they occurred, were contrary to the practices and policies of LIUNA and LIUNA PAC as expressly conveyed in the authorization form provided to and evidently read by Richmond.

Second, also without support is Richmond's allegation that LIUNA and LIUNA PAC acted in violation of 2 U.S.C. § 441b(a), which prohibits labor organizations from making a "contribution or expenditure in connection with any [federal] election." Richmond's complaint is entirely devoid of any factual basis for alleging that LIUNA or its affiliates used general treasury funds for prohibited political purposes (which, of course, is now just contributions, not expenditures after *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010)). Accordingly, even taking everything alleged in the complaint as true, there is no basis for finding reason to believe that LIUNA or LIUNA PAC

1600474020062

Mr. Jeff S. Jordan
Federal Election Commission
June 23, 2014
Page 5

violated § 441b(a).

Third, as discussed above, Penn Line and Local 453 have already taken steps to remedy any unauthorized payroll deductions made by Penn Line on Richmond's behalf, with both Penn Line and Local 453 separately refunding Richmond all PAC contributions. Also as discussed above, Penn Line and Local 453 have taken substantial steps to ensure that any similar conduct to that alleged by Richmond is not likely to be repeated.

Fourth, the prior consideration and settlement of the allegations made by Richmond in other fora warrant the exercise of the Commission's prosecutorial discretion to decline to proceed further in the present matter. Richmond's contributions to LIUNA PAC totaling \$11.51 have been twice reimbursed to him, and he has secured payments for other employment-related claims that he has made against both Penn Line and Local 453. He has also declined reinstatement by Penn Line in the course of those other proceedings. Although those other fora did not have authority to consider claims raised under the Act, they have produced substantial relief to Richmond.

Conclusion

For the foregoing reasons, the Commission should find that there is no reason to believe that LIUNA and LIUNA PAC violated the Act as alleged with respect to Penn Lines' alleged actions or the alleged receipt of unauthorized PAC contributions. It should therefore take no further action with respect to the complaint filed in this matter. In the alternative, we request that the Commission refer this matter to its ADR office prior to making any reason-to-believe determination or, further alternatively, that the Commission enter into pre-probable cause conciliation consistent with 11 CFR 111.18(d) prior to making any such determination.

Thank you for your consideration of this response.

Respectfully submitted,



Laurence E. Gold
Neil C. Weare

Counsel for Respondents LIUNA, LIUNA
PAC and Armand E. Sabatoni in his official
capacity as Treasurer

Exhibit A

YOUR CONTRIBUTION HELPS CREATE BETTER JOBS

This is to certify that _____
(Print Member Name)

(Address) (City) (State) (Zip Code) (Occupation)

LIUNA! PAC
Feel the Power

authorizes Employer/Local # _____ to deduct from each of my paychecks the amount designated below and remit that amount to LIUNA PAC as my voluntary contribution. I understand that this voluntary contribution is not a condition of membership in the union; I have a right to refuse to contribute without any reprisal; if specific contribution amounts are mentioned they are merely suggestions and I am free to contribute more or less and the union will not favor or disadvantage me because of the amount of my contribution or my decision not to contribute; LIUNA PAC will use the money it receives to make political expenditures and contributions in connection with federal, state and local elections; and only U.S. citizens and lawful permanent U.S. residents are eligible to contribute.

Contributions: \$ _____ or _____ % of my salary.
(Type/Print Clearly)

Date : _____ Signature: _____

Contributions to the Laborers' International Union of North America (LIUNA) PAC are not deductible as charitable contributions for federal income tax purposes. Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in a calendar year.

I.D. #FEC00007922



LIUNA PAC

11004410001